

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 21-305V

UNPUBLISHED

LOUIS FUCITO,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 27, 2023

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for Petitioner.*

*Jamica Marie Littles, U.S. Department of Justice, Washington, DC, for Respondent.*

### **DECISION AWARDING DAMAGES**<sup>1</sup>

On January 7, 2021, Louis Fucito filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that he suffered a left shoulder injury related to vaccine administration (“SIRVA”), a defined Table injury, or, in the alternative a causation-in-fact injury, after receiving the influenza vaccine on October 8, 2020. Amended Petition filed July 1, 2021 at 1, ¶¶ 5, 24. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 17, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On April 26, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$63,480.00 (representing \$62,500.00 for pain and suffering and \$980.00 for past unreimbursable

<sup>1</sup> Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

expenses). Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$63,480.00 (representing \$62,500.00 for pain and suffering and \$980.00 for past unreimbursable expenses) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

LOUIS FUCITO,

Petitioner,

V.

SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Respondent.

No. 21-305V

Chief Special Master Corcoran

ECF

**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

On January 7, 2021, Louis Fucito (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that he suffered a shoulder injury related to vaccine administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine that he received on October 8, 2020. Petition at 1-3. On April 14, 2023, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for a SIRVA Table injury. ECF No. 33. On April 17, 2023, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 34.

## **I. Items of Compensation**

### A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$62,500.00 in pain and suffering.

*See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that he incurred past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$980.00. *See* 42 U.S.C. § 300aa-15(a)(1)(B).

Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner be made through a lump sum payment as described below. Respondent also requests that the Chief Special Master's decision and the Court's judgment award the following<sup>1</sup>: a lump sum payment of \$63,480.00, in the form of a check payable to petitioner.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Louis Fucito:	<b>\$63,480.00</b>
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Respectfully submitted,

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO  
Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Deputy Director  
Torts Branch, Civil Division

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

ALEXIS B. BABCOCK  
Assistant Director  
Torts Branch, Civil Division

/s/ Jamica M. Littles  
JAMICA M. LITTLES  
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DATED: April 26, 2023